NG CHENG KIAT

v.

OVERSEAS UNION BANK

HIGH COURT MALAYA, KUALA LUMPUR
WAN HAMZAH J
[CIVIL APPEAL NO. 31 OF 1982]
3 JANUARY 1984

BANKING: *Cheques - Failure to honour - Whether breach of duty of bank - Current account closed - Knowledge of closure - To what extent relevant - Whether words "Account Closed" defamatory.*

TORT: *Defamation - Words "Account Closed" on cheque - Whether defamatory - Damages - Quantum - Assessment.*

The plaintiff was a customer of the Overseas Union Bank ("the Bank") and had a current account at one of the branches of the bank. He had no overdraft facilities from the Bank. On 29 November 1978, the Bank closed the plaintiff's account as there was debit in it but did not inform the plaintiff. On 7 December1978, it sent the plaintiff his Bank account for November. On 15 December 1978 the plaintiff paid in a sum of $3,200.00 for which he received the pay-in slip butt. On the same day he drew two cheques (No. 488534 and No. 488535). When cheque No. 488535 was presented on 16 December1978 it was dishonoured and returned with the words "Account Closed" printed on it. On 18 December1978 the plaintiff received a letter informing him that his account was closed on 29 November1978 and requesting him to collect the deposit made by him. On 19 December1978, cheque No. 488534 was presented. It was dishonoured and returned to the collecting bank with the words "Account Closed" printed on it. On the same day a cashier order was sent to the plaintiff by the Bank for the sum deposited by him.

The plaintiff claimed damages for failure to honour the cheques and also for injury to his credit and the reputation of his business.

Held:

[1] The Bank had a duty to honour cheque No. 488535 and was in breach of that duty. The pay-in slip butt returned to the plaintiff misled him into believing that his account was still open.

[2] Regarding cheque No. 488534, the Bank had no duty to honour it. The plaintiff had already been informed of his account being closed and he ought to have taken steps to prevent the cheque from being presented for payment.

[3] The words "Account Closed" on cheque No. 488535 were libellous. *(Wilson v.Midland Bank)*.

[4] In the circumstances of the case, damages of RM500.00 must be awarded against the Bank for breach of contract in wrongfully refusing to honour cheque No. 488535 and RM500.00 for libel for the words printed on it. In an action for breach of contract for wrongfully dishonouring a trader's cheque, the plaintiff is entitled to substantial but reasonable damages without having to allege or prove actual damage. In the case of libel, the quantum of damages depends upon a number of factors, including the plaintiff's position and standing. (*Baker v. Australia and New Zealand Bank* [1958] NZLR 907).

a *[Appeal allowed.]*

Cases referred to:
Baker v. Australia and New Zealand Bank [1958] NZLR 907

Other sources referred to:
The Law and Practice of Banking by J.M. Holden, Vol. 1 2 Edn. at p. 88.

b *For the applicant/plaintiff - K. S. Low; M/s. Che Mokhtar Mian Lee & Low*
For the respondent/defendant - S. Rathakrishnan; M/s.Shearn Delamore & Co.

JUDGMENT

Wan Hamzah J:
The Plaintiff was a customer of the Overseas Union Bank (hereafter referred to as the Bank), *c* which is the defendant in this case, and he had a current account at the Jalan Imbi branch of the Bank and the account number was 2810. He had not obtained any overdraft facility from the Bank. He claimed damages against the Bank for failure to honour two cheques drawn by him on that account. The President of the Sessions Court dismissed the plaintiff's claim, and the plaintiff now appeals against the President's decision.

This case can be better understood by tracing the events in chronological sequence. The *d* events were as follows :-

29 November1978 There was a debt of RM4.85 in the plaintiff's account and the Bank closed the account. On this date the Bank did not write a letter to the plaintiff to inform him of the closure.

7 December1978 The plaintiff received from the Bank statement of account in respect of *e* November 1978.

15 December1978 The plaintiff paid in a sum of RM3,200 to the Bank. The Bank returned to the plaintiff the pay-in slip butt Exhibit P2. On the same day the plaintiff drew the following cheques as "pay cash" cheques :-

Cheque No. 488534 for RM1,600.00

f

Cheque No. 488535 for RM582.50

16 December1978 The cheque No. 488535 drawn by the plaintiff was presented at the Bank's counter by or on behalf of one Siau Chan Leong. The Bank dishonoured the cheque and it was handed back with the words "Account Closed" printed on it.

g

18 December1978 The plaintiff received letter (Exhibit P6) dated 15 December1978 from the Bank informing him that his account was closed on 29 November1978. In this letter reference was made to the deposit of RM3,200 and the plaintiff was asked to call at the Bank so that refund of the deposit can be made to him.

h 19 December1978 The cheque No. 488534 drawn by the plaintiff was presented to the Bank through the United Asian Bank. It was dishonoured and on the same day it was returned to the United Asian Bank with the words "Account Closed" printed on it. On the same day cashier order for RM3,200 was sent by the Bank to the plaintiff to return the payment of the same amount which was paid in by the plaintiff on 15 December 1978.

i

The plaintiff alleged that the Bank had dishonoured the two cheques wrongfully and in breach of its duty to honour, causing the plaintiff to suffer damage. Further and in the alternative the plaintiff alleged that the Bank had falsely and maliciously imprinted on the two cheques the words "Account Closed" and published the said words to certain persons, and he had thereby been injured in his credit and reputation of his business and had suffered damage.

The Bank avers that as the plaintiff's account was already closed on 29 November 1978 the Bank was in no position to honour the cheques as there was no fund standing to the credit of the plaintiff in respect of his account. The Bank denies that it published the words "Account Closed" falsely and maliciously. The Bank denies that the words "Account Closed" bore any meaning defamatory or derogatory to the plaintiff or that they were capable of bearing such meaning.

Evidence shows that there were ample grounds to justify the Bank to close the plaintiff's account on 29 November 1978. On that date his account was in debit, and over a period previous to that date the plaintiff had operated his account in an improper and unsatisfactory manner. In 1978 before December on four occasions the plaintiff issued cheques of amounts far in excess of the credit balance. Previously, i.e. in 1976, on three occasions the plaintiff issued cheques of amounts far in excess of the credit balance. As the result many cheques drawn by the plaintiff were dishonoured.

The Bank alleged that the statement of account in respect of November 1978 which was sent to the plaintiff consisted of two sheets and in the second (continuation) sheet the words "Account Closed" were imprinted. Therefore it was contended by the Bank that the plaintiff came to know of the closure when he received the statement of account on 7 December 1978 and that he ought not to have issued the two cheques after he came to know that his account had been closed. The plaintiff denied that he received the second sheet and alleged that on 7 December 1978 he received only the first sheet (Exhibit P1A), which did not show the words "Account Closed". In the written grounds of decision the President of the Sessions Court stated a finding that the Bank closed the plaintiff's account without prior notice. The last entry in Exhibit P1A was dated 8 November 1978. The plaintiff ought to know that Exhibit P1A was not a complete statement of account in respect of November 1978 because it did not show service charge for that month. Therefore he ought to have asked the Bank for a complete statement of account in respect of November 1978. Moreover, the plaintiff ought to know that at the end of that month his account was in debit, even if he had not received the second (continuation) sheet of the statement of account, because as a customer he was expected to calculate his bank balance himself and should not rely entirely on statement of account supplied by the Bank to find out what the balance was. Therefore I would have held that the plaintiff ought not to have drawn the two cheques No. 488534 and 488535 and I would have dismissed the plaintiff's claim had it not been for the reason which I shall presently state.

As I have stated earlier, on 15 December 1978 the plaintiff paid into the Bank cash amounting to RM3,200.00 and the Bank returned to the plaintiff the pay-in slip butt Exhibit P2. This butt bears an acknowledgement in the following words:-

> A/c 2810. Overseas Union Bank Ltd., Jalan Imbi Office, Kuala Lumpur, received for credit of Ng Cheng Kiat cash RM3,200.00. Kuala Lumpur, 15 December 1978.

Even if the plaintiff had known that his account had been closed, this butt containing the acknowledgement in such terms must have led the plaintiff to believe that his account had been kept open again by the Bank's acceptance of the payment of that sum of RM3,200.00

in cash. Therefore he cannot be blamed for drawing the two cheques on that account, and in my opinion, under such circumstances the Bank had the duty to honour the cheque No. 488535 for RM582.50 when it was presented at the counter on 16 December 1978. From the evidence it is not clear in which account the Bank first entered the sum of RM3,200 when it was received from the plaintiff Probably it was first entered into the plaintiff's account. According to the Bank's manager (D.W.1) the sum was later transferred to the Creditor's Account. Irrespective of what actually happened, the fact remains that the plaintiff was informed by means of the pay-in slip butt Exhibit P2 that the sum was being credited to his account. It appears that after the plaintiff's account had been closed, the Bank's officer concerned made the mistake of accepting the sum of RM3,200.00 from the plaintiff believing that the plaintiff's account was still open. In my judgment, irrespective of the mistake the Bank had the duty to honour the cheque No. 488535 having led the plaintiff to believe that his account was kept open.

As regards the cheque No. 488534 for RM1,600.00, in my opinion that cheque was in different position from cheque No. 488535. On 18 December 1978 (i.e. before the cheque No. 488534 was presented to the Bank for payment) the plaintiff received the letter Exhibit P6 in which he was asked to collect refund of RM3,200.00 which he had purportedly paid into his account. Therefore on 18 December 1978 the plaintiff knew of the mistake and the fact that his account had not really been kept open again by the payment of RM3,200.00 cash into the Bank, and he ought to have taken steps to prevent the cheque No. 488534 from being presented to the Bank for payment. If he had done so the Bank would not have printed the words "Account Closed" on it. Having informed the plaintiff that the sum of RM3,200 had been accepted by mistake, the Bank had no duty to honour the cheque No. 488534 when it was presented for payment on 19 December 1978.

One question to be considered in this case is whether the words "Account Closed" were defamatory. In *Wilson v. Mildand Bank* (Referred to in *"The Law and Practice of Banking" by J.M. Holden, Volume 1, Second Edition, at page 88*), the customer's cheque was wrongfully dishonoured by the bank with the answer "no account". The Court awarded the customer nominal damages for breach of contract and substantial damages for libel. Therefore in my opinion the words "Account Closed" written on a cheque contrary to the truth would similarly be libellous. As I have indicated, no blame can be attached to the Bank for printing the words "Account Closed" on the cheque No. 488534. As regards the cheque No. 488535, in my judgment it was libellous for the Bank to print the words "Account Closed" on it at the time when the Bank had the duty to honour it.

Where a customer brings an action against his bank for wrongfully refusing to pay a cheque which he has drawn, the amount of the damages for breach of contract depends on whether or not the customer is a trader. In an action for breach of contract for wrongfully dishonouring a trader's cheque, the plaintiff is entitled to recover substantial but reasonable damages for injury to his commercial credit, without the necessity of alleging and proving any actual damage. Irrespective of whether the plaintiff is a trader or not, the following is the rule of assessment of damages for libel as stated by Shorland J**.** in *Baker v. Australia and New Zealand Bank* [1958] NZLR 907:-

> The matters to be taken into consideration in assessing damages are the position and standing of the plaintiff, the nature of the libel, the mode and extent of the publication, the absence of any retraction or apology, and the whole conduct of the defendant from the time when the libel was published, down to the very moment of verdict.

The plaintiff in the present case is the general manager of Syarikat Hock Guan and assistant managing director of Ng Chee Kuan & Sons Hardware Sdn. Bhd. He is also a director of Waja Steel Sdn. Bhd., Amalgamated Industrial Steel Sdn. Bhd. and managing director of Hock Hup Development Sdn. Bhd. He is also manager of three other companies. He admitted that the Bank's manager apologised to him when he went to see the manager after he came to know that Cheque NO. 488534 had been dishonoured. Taking all the circumstances into consideration I assess damages at RM500.00 against the Bank for breach of contract in wrongfully refusing to honour the cheque NO. 488535, and RM500.00 for libel in printing the words "Account Closed" on that cheque and publishing them.

I allow the appeal and order that the damages be awarded to the plaintiff together with the costs here and in the Court below.

Also found at [1984] 1 CLJ 185